

FIRST REGULAR SESSION

SENATE BILL NO. 337

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Read 1st time February 18, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1653S.011

AN ACT

To repeal sections 407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 407.931, 407.933, and 407.934, RSMo, and to enact in lieu thereof nine new sections relating to the sale of tobacco related products to minors, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 407.931, 407.933, and 407.934, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 407.924, 407.925, 407.926, 407.927, 407.928, 407.929, 407.931, 407.933, and 407.934, to read as follows:

407.924. 1. The division of liquor control within the department of public safety shall implement and enforce the provisions of sections 407.925 to 407.934.

2. [Beginning January 1, 2003,] The division of liquor control shall submit an annual report to the general assembly on the effectiveness of sections 407.925 to 407.934 in reducing tobacco, **tobacco-derived product, and vapor product** possession by minors and the enforcement activities by the division for violations of sections 407.925 to 407.934.

407.925. As used in sections 407.925 to 407.932, the following terms mean:

(1) "Center of youth activities", any playground, school or other facility, when such facility is being used primarily by persons under the age of eighteen for recreational, educational or other purposes;

(2) "Distribute", a conveyance to the public by sale, barter, gift or sample;

(3) "Minor", a person under the age of eighteen;

(4) "Municipality", the city, village or town within which tobacco products,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

9 **tobacco-derived products, or vapor products** are sold or distributed or, in
10 the case of tobacco products, **tobacco-derived products, or vapor products**
11 that are not sold or distributed within a city, village or town, the county in which
12 they are sold or distributed;

13 (5) "Person", an individual, partnership, copartnership, firm, company,
14 public or private corporation, association, joint stock company, trust, estate,
15 political subdivision or any agency, board, department or bureau of the state or
16 federal government, or any other legal entity which is recognized by law as the
17 subject of rights and duties;

18 (6) "Proof of age", a driver's license or other generally accepted means of
19 identification that contains a picture of the individual and appears on its face to
20 be valid;

21 (7) "Rolling papers", paper designed, manufactured, marketed, or sold for
22 use primarily as a wrapping or enclosure for tobacco, which enables a person to
23 roll loose tobacco into a smokable cigarette;

24 (8) "Sample", a tobacco product, **tobacco-derived product, and vapor**
25 **product** distributed to members of the general public at no cost or at nominal
26 cost for product promotional purposes;

27 (9) "Sampling", the distribution to members of the general public of
28 tobacco product, **tobacco-derived product, and vapor product** samples;

29 (10) "Tobacco products", any substance containing tobacco leaf, including,
30 but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or
31 dipping tobacco, **but does not include a tobacco-derived product or a**
32 **vapor product**;

33 (11) "**Tobacco-derived product**", any **noncombustible product**
34 **derived from tobacco that is intended for human consumption, whether**
35 **chewed, absorbed, dissolved, or ingested by any other means, but does**
36 **not include a vapor product or any product regulated by the United**
37 **States Food and Drug Administration under Chapter V of the Food,**
38 **Drug and Cosmetic Act**;

39 (12) "**Vapor product**", a **noncombustible tobacco-derived product**
40 **containing nicotine, such as an electronic cigarette, that employs a**
41 **mechanical heating element, battery, or electronic circuit, regardless**
42 **of shape or size, that can be used to heat a liquid nicotine solution**
43 **contained in a vapor cartridge. "Vapor product" includes any vapor**
44 **cartridge that can be used with or in a vapor product and containing**

45 **liquid nicotine solution, but does not include any product regulated by**
46 **the United States Food and Drug Administration under Chapter V of**
47 **the Food, Drug and Cosmetic Act;**

48 [(11)] **(13)** "Vending machine", any mechanical electric or electronic,
49 self-service device which, upon insertion of money, tokens or any other form of
50 payment, dispenses tobacco products, **tobacco-derived products, or vapor**
51 **products.**

407.926. 1. Any person or entity who sells tobacco products, **tobacco-**
2 **derived products, or vapor products** shall deny the sale of such tobacco
3 products, **tobacco-derived products, or vapor products** to any person who
4 is less than eighteen years of age.

5 2. Any person or entity who sells or distributes tobacco products,
6 **tobacco-derived products, or vapor products** by mail or through the
7 internet in this state in violation of subsection 1 of this section shall be assessed
8 a fine of two hundred fifty dollars for the first violation and five hundred dollars
9 for each subsequent violation.

407.927. The owner of an establishment at which tobacco products,
2 **tobacco-derived products, vapor products,** or rolling papers are sold at
3 retail or through vending machines shall cause to be prominently displayed in a
4 conspicuous place at every display from which tobacco products, **tobacco-**
5 **derived products, or vapor products** are sold and on every vending machine
6 where tobacco products are purchased a sign that shall:

7 (1) Contain in red lettering at least one-half inch high on a white
8 background the following: "It is a violation of state law for cigarettes or other
9 tobacco products, **tobacco-derived products, or vapor products** to be sold
10 or otherwise provided to any person under the age of eighteen or for such person
11 to purchase, attempt to purchase or possess cigarettes or other tobacco products,
12 **tobacco-derived products, or vapor products.**"; and

13 (2) Include a depiction of a pack of cigarettes at least two inches high
14 defaced by a red diagonal diameter of a surrounding red circle, and the words
15 "Under 18".

407.928. No person or entity shall sell individual packs of cigarettes or
2 smokeless tobacco products, **tobacco-derived products, or vapor products**
3 unless such packs satisfy one of the following conditions prior to the time of sale:

4 (1) It is sold through a vending machine; or

5 (2) It is displayed behind the check-out counter or it is within the

6 unobstructed line of sight of the sales clerk or store attendant from the checkout
7 counter.

407.929. 1. A person or entity selling tobacco products, **tobacco-derived**
2 **products, vapor products**, or rolling papers or distributing tobacco product,
3 **tobacco-derived product, or vapor product** samples shall require proof of
4 age from a prospective purchaser or recipient if an ordinary person would
5 conclude on the basis of appearance that such prospective purchaser or recipient
6 may be under the age of eighteen.

7 2. The operator's or chauffeur's license issued pursuant to the provisions
8 of section 302.177, or the operator's or chauffeur's license issued pursuant to the
9 laws of any state or possession of the United States to residents of those states
10 or possessions, or an identification card as provided for in section 302.181, or the
11 identification card issued by any uniformed service of the United States, or a
12 valid passport shall be presented by the holder thereof upon request of any agent
13 of the division of liquor control or any owner or employee of an establishment that
14 sells tobacco, **tobacco-derived products, or vapor products**, for the purpose
15 of aiding the registrant, agent or employee to determine whether or not the
16 person is at least eighteen years of age when such person desires to purchase or
17 possess tobacco products, **tobacco-derived products, or vapor products**
18 procured from a registrant. Upon such presentation, the owner or employee of
19 the establishment shall compare the photograph and physical characteristics
20 noted on the license, identification card or passport with the physical
21 characteristics of the person presenting the license, identification card or
22 passport.

23 3. Any person who shall, without authorization from the department of
24 revenue, reproduce, alter, modify or misrepresent any chauffeur's license, motor
25 vehicle operator's license or identification card shall be deemed guilty of a
26 misdemeanor and upon conviction shall be subject to a fine of not more than one
27 thousand dollars, and confinement for not more than one year, or by both such
28 fine and imprisonment.

29 4. Reasonable reliance on proof of age or on the appearance of the
30 purchaser or recipient shall be a defense to any action for a violation of
31 subsections 1, 2 and 3 of section 407.931. No person shall be liable for more than
32 one violation of subsections 2 and 3 of section 407.931 on any single day.

407.931. 1. It shall be unlawful for any person to sell, provide or
2 distribute tobacco products, **tobacco-derived products, or vapor products**

3 to persons under eighteen years of age.

4 2. [By January 1, 2002,] All vending machines that dispense tobacco
5 products, **tobacco-derived products, or vapor products** shall be located
6 within the unobstructed line of sight and under the direct supervision of an adult
7 responsible for preventing persons less than eighteen years of age from
8 purchasing any tobacco product, **tobacco-derived product, or vapor product**
9 from such machine or shall be equipped with a lock-out device to prevent the
10 machines from being operated until the person responsible for monitoring sales
11 from the machines disables the lock. Such locking device shall be of a design that
12 prevents it from being left in an unlocked condition and which will allow only a
13 single sale when activated. A locking device shall not be required on machines
14 that are located in areas where persons less than eighteen years of age are not
15 permitted or prohibited by law. An owner of an establishment whose vending
16 machine is not in compliance with the provisions of this subsection shall be
17 subject to the penalties contained in subsection 5 of this section. A determination
18 of noncompliance may be made by a local law enforcement agency or the division
19 of liquor control. Nothing in this section shall apply to a vending machine if
20 located in a factory, private club or other location not generally accessible to the
21 general public.

22 3. No person or entity shall sell, provide or distribute any tobacco product,
23 **tobacco-derived product, vapor product**, or rolling papers to any minor, or
24 sell any individual cigarettes to any person in this state. This subsection shall
25 not apply to the distribution by family members on property that is not open to
26 the public.

27 4. Any person including, but not limited to, a sales clerk, owner or
28 operator who violates subsection 1, 2 or 3 of this section or section 407.927 shall
29 be penalized as follows:

- 30 (1) For the first offense, twenty-five dollars;
31 (2) For the second offense, one hundred dollars;
32 (3) For a third and subsequent offense, two hundred fifty dollars.

33 5. Any owner of the establishment where tobacco products, **tobacco-**
34 **derived products, or vapor products** are available for sale who violates
35 subsection 3 of this section, in addition to the penalties established in subsection
36 4 of this section, shall be penalized in the following manner:

- 37 (1) For the first violation per location within two years, a reprimand shall
38 be issued by the division of liquor control;

39 (2) For the second violation per location within two years, the division of
40 liquor control shall issue a citation prohibiting the outlet from selling tobacco
41 products, **tobacco-derived products, or vapor products** for a
42 twenty-four-hour period;

43 (3) For the third violation per location within two years, the division of
44 liquor control shall issue a citation prohibiting the outlet from selling tobacco
45 products, **tobacco-derived products, or vapor products** for a
46 forty-eight-hour period;

47 (4) For the fourth and any subsequent violations per location within two
48 years, the division of liquor control shall issue a citation prohibiting the outlet
49 from selling tobacco products, **tobacco-derived products, or vapor products**
50 for a five-day period.

51 6. Any owner of the establishment where tobacco products, **tobacco-**
52 **derived products, or vapor products** are available for sale who violates
53 subsection 3 of this section shall not be penalized pursuant to this section if such
54 person documents the following:

55 (1) An in-house or other tobacco compliance employee training program
56 was in place to provide the employee with information on the state and federal
57 regulations regarding tobacco sales to minors. Such training program must be
58 attended by all employees who sell tobacco products to the general public;

59 (2) A signed statement by the employee stating that the employee has
60 been trained and understands the state laws and federal regulations regarding
61 the sale of tobacco, **tobacco-derived products, or vapor products** to minors;
62 and

63 (3) Such in-house or other tobacco compliance training meets the
64 minimum training criteria, which shall not exceed a total of ninety minutes in
65 length, established by the division of liquor control.

66 7. The exemption in subsection 6 of this section shall not apply to any
67 person who is considered the general owner or operator of the outlet where
68 tobacco products, **tobacco-derived products, or vapor products** are available
69 for sale if:

70 (1) Four or more violations per location of subsection 3 of this section
71 occur within a one-year period; or

72 (2) Such person knowingly violates or knowingly allows his or her
73 employees to violate subsection 3 of this section.

74 8. If a sale is made by an employee of the owner of an establishment in

75 violation of sections 407.925 to 407.934, the employee shall be guilty of an offense
76 established in subsections 1, 2 and 3 of this section. If a vending machine is in
77 violation of section 407.927, the owner of the establishment shall be guilty of an
78 offense established in subsections 3 and 4 of this section. If a sample is
79 distributed by an employee of a company conducting the sampling, such employee
80 shall be guilty of an offense established in subsections 3 and 4 of this section.

81 9. A person cited for selling, providing or distributing any tobacco product,
82 **tobacco-derived product, or vapor product** to any individual less than
83 eighteen years of age in violation of subsection 1, 2 or 3 of this section shall
84 conclusively be presumed to have reasonably relied on proof of age of the
85 purchaser or recipient, and such person shall not be found guilty of such violation
86 if such person raises and proves as an affirmative defense that such individual
87 presented a driver's license or other government-issued photo identification
88 purporting to establish that such individual was eighteen years of age or older.

89 10. Any person adversely affected by this section may file an appeal with
90 the administrative hearing commission which shall be adjudicated pursuant to
91 the procedures established in chapter 621.

407.933. 1. No person less than eighteen years of age shall purchase,
2 attempt to purchase or possess cigarettes [or], other tobacco products, **tobacco-**
3 **derived products, or vapor products** unless such person is an employee of
4 a seller of cigarettes or tobacco products and is in such possession to effect a sale
5 in the course of employment, or an employee of the division of liquor control for
6 enforcement purposes pursuant to subsection 5 of section 407.934.

7 2. Any person less than eighteen years of age shall not misrepresent his
8 or her age to purchase cigarettes [or], tobacco products, **tobacco-derived**
9 **products, or vapor products**.

10 3. Any person who violates the provisions of this section shall be
11 penalized as follows:

12 (1) For the first violation, the person is guilty of an infraction and shall
13 have any cigarettes [or], tobacco products, **tobacco-derived products, or**
14 **vapor products** confiscated;

15 (2) For a second violation and any subsequent violations, the person is
16 guilty of an infraction, shall have any cigarettes [or], tobacco products, **tobacco-**
17 **derived products, or vapor products** confiscated and shall complete a tobacco
18 education or smoking cessation program, if available.

407.934. 1. No person shall sell cigarettes [or], tobacco products,

2 **tobacco-derived products, or vapor products** unless the person has a retail
3 sales tax license.

4 2. Beginning January 1, 2002, the department of revenue shall permit
5 persons to designate through the internet or by including a place on all sales tax
6 license applications for the applicant to designate himself or herself as a seller
7 of tobacco products, **tobacco-derived products, or vapor products** and to
8 provide a list of all locations where the applicant sells such products.

9 3. On or before July first of each year, the department of revenue shall
10 make available to the division of liquor control and the department of mental
11 health a complete list of every establishment which sells cigarettes [and], other
12 tobacco products, **tobacco-derived products, or vapor products** in this state.

13 4. The division of liquor control shall have the authority to inspect stores
14 and tobacco outlets for compliance with all laws related to access of tobacco
15 products, **tobacco-derived products, or vapor products** to minors. The
16 division may employ a person seventeen years of age, with parental consent, to
17 attempt to purchase tobacco for the purpose of inspection or enforcement of
18 tobacco laws.

19 5. The supervisor of the division of liquor control shall not use minors to
20 enforce the provisions of this chapter unless the supervisor promulgates rules
21 that establish standards for the use of minors. The supervisor shall establish
22 mandatory guidelines for the use of minors in investigations by a state, county,
23 municipal or other local law enforcement authority which shall be followed by
24 such authority and which shall, at a minimum, provide for the following:

25 (1) The minor shall be seventeen years of age;

26 (2) The minor shall have a youthful appearance, and the minor, if a male,
27 shall not have facial hair or a receding hairline and if a female, shall not wear
28 excessive makeup or excessive jewelry;

29 (3) The state, county, municipal or other local law enforcement agency
30 shall obtain the consent of the minor's parent or legal guardian before the use of
31 such minor on a form approved by the supervisor;

32 (4) The state, county, municipal or other local law enforcement agency
33 shall make a photocopy of the minor's valid identification showing the minor's
34 correct date of birth;

35 (5) Any attempt by such minor to purchase tobacco products, **tobacco-**
36 **derived products, or vapor products** shall be videotaped or audiotaped with
37 equipment sufficient to record all statements made by the minor and the seller

38 of the tobacco product, **tobacco-derived product, or vapor product;**

39 (6) The minor shall carry his or her own identification showing the
40 minor's correct date of birth and shall, upon request, produce such identification
41 to the seller of the tobacco product, **tobacco-derived product, or vapor**
42 **product;**

43 (7) The minor shall answer truthfully any questions about his or her age
44 and shall not remain silent when asked questions regarding his or her age;

45 (8) The minor shall not lie to the seller of the tobacco product, **tobacco-**
46 **derived product, or vapor product** to induce a sale of tobacco products,
47 **tobacco-derived products, or vapor products;**

48 (9) The minor shall not be employed by the state, county, municipal or
49 other local law enforcement agency on an incentive or quota basis;

50 (10) The state, county, municipal or other local law enforcement agency
51 shall, within forty-eight hours, contact or take all reasonable steps to contact the
52 owner or manager of the establishment if a violation occurs;

53 (11) The state, county, municipal or other local law enforcement agency
54 shall maintain records of each visit to an establishment where a minor is used by
55 the state, county, municipal or other local law enforcement agency for a period of
56 at least one year following the incident, regardless of whether a violation occurs
57 at each visit, and such records shall, at a minimum, include the following
58 information:

59 (a) The signed consent form of the minor's parent or legal guardian;

60 (b) A Polaroid photograph of the minor;

61 (c) A photocopy of the minor's valid identification, showing the minor's
62 correct date of birth;

63 (d) An information sheet completed by the minor on a form approved by
64 the supervisor; and

65 (e) The name of each establishment visited by the minor, and the date and
66 time of each visit.

67 6. If the state, county, municipal or other local law enforcement authority
68 uses minors in investigations or in enforcing or determining violations of this
69 chapter or any local ordinance and does not comply with the mandatory
70 guidelines established by the supervisor of liquor control in subsection 5 of this
71 section, the supervisor of liquor control shall not take any disciplinary action
72 against the establishment or seller pursuant to this chapter based on an alleged
73 violation discovered when using a minor and shall not cooperate in any way with

74 the state, county, municipal or other local law enforcement authority in
75 prosecuting any alleged violation discovered when using a minor.

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